IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

LA.App..No. 278 of 2004(D)

APPELLANT: 2ND RESPONDENT:

THE PROJECT OFFICER (OECF)
KERALA WATER AUTHORITY, KOZHIKODE.

BY ADV. SRI.BABU VARGHESE, SC, KWA

RESPONDENTS: CLAIMANTS & 1ST RESPONDENT:
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1. FATHER SUPERIOR, ST. PAULS MONASTRY
CALVERY HILLS, KADALUNDY.

2. THE SPECIAL TAHSILDAR (LA)
OECF, KERALA WATER AUTHORITY,
KOZHIKODE.

BY ADV. SRI.TOM K.THOMAS

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON 13/6/2007 DELIVERED THE FOLLOWING:

ORDER ON IA NO.1387/2004

DISMISSED

13/6/2007

SD/- KURIAN JOSEPH, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE.

// TRUE COPY //

P.S. TO JUDGE

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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fixed the market value of the acquired property at Rs.12,000/- per cent even though the claim was at the rate of Rs.35,000/- per cent.

3. The appellant challenges the enhancement on various grounds. It is contended that the court below has acted erroneously in accepting the report of the Commissioner for fixing the market value. It was also submitted that the Commissioner was not examined by the claimant and hence the acceptance of the report was not proper and legal.

4. The land in question is garden land. Going by the evidence of AW.1, the land is situated on the side of Kozhikkode - Parappanangadi Road in an important locality. There are public institutions also near the acquired land. The said land formed portion of a large extent which was set apart for construction of a High school. The basic land is at a distance of 2 km. away from the acquired property and it is not having any direct road access. The property covered by Ext.A1 is also not having any direct road access and a total amount of Rs.2,50,000/- has been paid as sale consideration for an extent of 14.62 cents of land.

5. A reading of the report of the Commissioner evidences the following facts: The acquired land as evidenced by Ext.C2 sketch, is bounded by Kozhikkode - Parappanangadi Road. Public offices like Agricultural office, Community hall as wall as the office of a Co-operative

Bank are within one kilo meter from the acquired property. Adjacent to the acquired property, an L.P. School as well as Naza Plastic Company are functioning. The report further shows that the basic land is not of a similar nature compared to the land acquired and there is no direct road access to the said land. As regards the property covered by Ext.A1, the report shows that the said property is also not having any direct road access and it is also a garden land.

6. The appellant had filed objection to the commission report justifying the value fixed by the land acquisition officer. An assessment of the evidence in this case clearly proves the fact that the acquired land is on the side of the Kozhikkode - Parappanangadi road whereas the basic land is not having any road access. The land acquired is adjacent to an L.P. School and public institutions are situated within one kilo meter of the acquired land. The appellant or the State has not adduced any evidence to support the value awarded by the Land Acquisition Officer. The court below has considered the evidence adduced in detail and has fixed the land value at Rs.12,000/- per cent which is lower than the value covered by Ext.A1 document. The said sale deed is dated 17.10.1995, 3 years prior to the Section 4(1) notification. Since the said fixation is based on proper assessment of the evidence adduced in the case, we find no reason to

interfere with the judgment of the court below in fixing the land value at Rs.12,000/- per cent. Even though the counsel for the appellant argued that the Commissioner was not examined, going by Rule 10(2) of Order XXVI, the report of the Commissioner and the evidence taken shall be evidence in the suit and shall form part of the record. If the appellant wanted to challenge the evidence collected by the Commissioner as well as the report, they could have summoned the Commissioner and examined him before the court below. There is no case that sufficient opportunity was not given to adduce evidence also. Therefore, the said contention is without any merit and we reject the same. Apart from the report of the Commissioner, there is the evidence of AW.1 as well as Ext.A1. Hence, the assessment by the court is fair and just.

Confirming the judgment and decree passed by the Reference Court, this appeal is dismissed without any order as to costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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